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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 22.08.2023*

+ **FAO (COMM) 167/2023 & CM Nos. 42437/2023, 42438/2023 & 42439/2023**

M/S FIITJEE LTD.

..... Appellant

Through: Mr. Amit Sharma, Mr. Amit Choudhary, Ms. Konika Mitra & Mr. Om Batra, Advs.

versus

PIONEER PUBLICITY CORPORATION  
PVT. LTD.

..... Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J.**

1. The appellant (hereafter '**FIITJEE**') has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning a judgement dated 10.05.2023 (hereafter '**the impugned judgement**') passed by the learned Commercial Court. By the impugned judgment, the learned Commercial Court rejected the applications filed by the parties under Section 34 of the A&C Act, seeking to set aside the arbitral award dated 11.01.2020 (hereafter '**the impugned award**'). FIITJEE is aggrieved to the limited extent that its application under Section 34 of



the A&C Act being *OMP (COMM) 18/2020* captioned *M/s FIITJEE Ltd. v. Pioneer Publicity Corporation Pvt. Ltd.* has been rejected.

2. FIITJEE is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at FIITJEE House, 29A Kalu Sarai, Sarvapriya Vihar, New Delhi. It, *inter alia*, provides tuition and coaching to students preparing for entrance exams to IIT(s) and other B.tech colleges.

3. The respondent (hereafter '**Pioneer**') is involved in the business of outdoor advertisements. On 08.08.2017, Pioneer entered into a license agreement with Delhi Metro Rail Corporation (hereafter '**DMRC**') to acquire 'naming rights' of twenty-three metro stations including the naming rights of the metro station near IIT, Delhi on an annual license fee of ₹66,00,000/- for a period of ten years.

4. FIITJEE, in order to enhance its brand value, entered into a license agreement on 11.01.2018 (hereafter '**the Agreement**'), with Pioneer, *inter alia*, regarding the naming rights of IIT metro station, which was under construction at the material time.

5. In terms of the Agreement, the IIT metro station was to be renamed as "FIITJEE-IIT" Metro Station on an annual fee of ₹16,00,000 per month plus taxes for a period of 10 years, with a 2-year lock-in period. FIITJEE was entitled to terminate the Agreement by serving a 3-months' notice period after the expiry of the lock-in period. FIITJEE also agreed to pay one time fabrication charges. The license fee was payable from the date on which the IIT metro station



became operational. Relevant portions of Article 2 of the Agreement are produced hereinbelow:

## “2. RIGHTS AND OBLIGATIONS OF PARTIES

The PIONEER hereby undertakes to provide the following facility to the second party, i.e., FIITJEE in pursuance to the present agreement for "Semi Naming Rights of IIT Metro Station in Delhi" as "FIITJEE-IIT"

- a. Approx. Area of 70,000 sq. ft. for brand colour on the elevation of the station building.
- b. 2 neon of approx. size 10'(W)\*10 '(H) with semi-naming “FIITJEE-IIT” on the exterior walls of the station building.
- c. Brand Name prefixed with the station name i.e., “FIITJEE-IIT” at the entry & exits along with placements at platform area i.e., minimum 12 locations.
- d. Right to choose scheme to promote brand. ...”

6. The semi-branding advertising boards and hoardings were displayed at suitable places describing the metro station as FIITJEE-IIT even prior to the metro station becoming operational. Aggrieved by the display of the signages, Indian Institute of Technology, Delhi (hereafter ‘IIT’) on 02.05.2018 wrote a mail to DMRC alleging that rebranding is misleading the IIT aspirants to assume that there is an association between the IIT and FIITJEE.

7. Thereafter, IIT filed a writ petition being W.P(C) No. 5708/2018 before this court, which was disposed of by an order dated 10.06.2018. The Court directed that a disclaimer reading “*FIITJEE is*



*in no way connected to any IIT*”, be displayed and that the font and size of the disclaimer be same as that of “*FIITJEE*”.

8. The appellant, aggrieved by the same, sought review of the said order and also appealed the said order before Division Bench of this Court. But the review petition as well as the appeal were dismissed.

9. On 24.09.2018, Pioneer wrote an e-mail intimating FIITJEE that it had not paid the license fee and the Agreement would stand cancelled if it did not pay the same within a period of 15 days. FIITJEE replied to the email on 25.09.2018 objecting the revocation of the Agreement, but did not pay the outstanding fee.

10. Thereafter, Pioneer filed a petition before this court under Section 11(6) of the A&C Act for appointment of an arbitrator. Pioneer communicated that the Agreement stands terminated with effect from 28.11.2018 and called upon the appellant to pay outstanding license fee of ₹70,14,400/- and fabrication charges of ₹47,01,120/-. This Court by an order dated 13.03.2019 allowed the petition and appointed the Arbitral Tribunal comprising of the Sole Arbitrator.

### ***Arbitral Proceedings***

11. Before the Arbitral Tribunal, Pioneer filed its Statement of Claims claiming unpaid license fee for the period up to 28.11.2018 amounting to ₹53,76,000/-; fabrication charges amounting to ₹47,01,120/-; *pendente lite* interest at the rate of 18% per annum as well as interest till realisation of the amount as claimed; litigation



charges amounting to ₹5,00,000/-; and costs of the arbitral proceedings.

12. FIITJEE filed a Statement of Defence as well as its Counter Claim claiming a refund of license fee amounting to ₹54,14,400/-, which it claimed had been wrongly retained by Pioneer.

13. Pioneer claimed that FIITJEE was liable to pay the license fee till the date the license was terminated. In addition, it was also liable to pay fabrication charges in terms of the Agreement. FIITJEE disputed the said claim. FIITJEE claimed that in terms of the Agreement, FIITJEE was entitled to rename the metro station as FIITJEE-IIT metro station in the manner, colour and style as agreed upon by the parties. And, Pioneer was obliged to provide an area of 70,000/- square feet on the elevation of the station building and two neon size of approximately 10'(W)\*10'(H) on the exterior walls of the station building. FIITJEE alleged that Pioneer had acted in contravention of its obligations and had put up disclaimer signages, which read as "*FIITJEE is in no way connected to any IIT*". According to FIITJEE, this destroyed the very essence of Agreement resulting in financial loss to it. FIITJEE claimed that the said disclaimer was leading students and their parents to believe that FIITJEE had stopped providing coaching for IIT-JEE examination.

14. The Arbitral Tribunal examined the communications between the parties and found that despite the disclaimer being put up at the signages, FIITJEE was willing to continue with the Agreement and was willing to pay the charges for the same as agreed. It was also



willing to abide by the terms and conditions of the Agreement, which was evident from the fact that it had preferred a petition for review of the order directing disclaimer to be put up and had also appealed against the said order. The Arbitral Tribunal held that FIITJEE had kept alive the Agreement and intended to take full advantage of the same during the period of admission of students of Class 9<sup>th</sup> and 11<sup>th</sup> in coaching institutes, which is normally done during the months of April to July each year. Thus, FIITJEE had accepted the breach. The Arbitral Tribunal took note of the fact that FIITJEE had also suggested an alternative disclaimer to the Court which read as “*FIITJEE has no business association with IIT Delhi*”.

15. The Arbitral Tribunal rejected the contention that the Agreement stood frustrated or that FIITJEE was entitled to refund of the amounts paid. However, the Arbitral Tribunal did not accept that Pioneer was entitled to a license fee for the entire period as claimed. It held that Pioneer had covered up the signages, which was evident from an email dated 27.09.2018 and therefore, it could not claim any rental charges or any license fee thereafter. FIITJEE had been deprived of the benefit of signages after 27.09.2018. Thus, it could be held liable to pay for the same only for the period till 27.09.2018. Thus, the Arbitral Tribunal awarded a sum of ₹16,36,267/- on account of license fee in favour of Pioneer after adjusting the license fee and TDS already paid as well as the goods and service tax on the license fee.

16. Insofar as Pioneer’s claim for ₹47,01,120/- (Rupees forty seven lacs one thousand one hundred and twenty only) towards charges for



fabrication of signages is concerned, the Arbitral Tribunal found in favour of Pioneer and awarded for the said amount in favour of Pioneer. The Arbitral Tribunal held that FIITJEE had stopped paying license fee to Pioneer, thus, compelling Pioneer to terminate the contract and take “*an unpleasant step of covering the signages*”. The Arbitral Tribunal held that that even though the benefit of signages was meant to continue for a period of ten years, FIITJEE was responsible for an earlier termination of the Agreement. Accordingly, FIITJEE was required to pay the entire amount incurred for the fabrication of the signages in question.

17. The Arbitral Tribunal rejected the counter-claims made by FIITJEE.

### ***Proceedings under Section 34 of the A&C Act***

18. Both the parties, Pioneer as well as FIITJEE, filed applications under Section 34 of the A&C Act seeking to set aside the impugned award. The said applications [OMP(COMM) 14/2020 captioned *Pioneer Publicity Corporation Pvt. Ltd. v. M/s FIITJEE Ltd.* and OMP(COMM) 18/2020 captioned *M/s FIITJEE Ltd. v. Pioneer Publicity Corporation Pvt. Ltd.*] were rejected by the learned Commercial Court and the Court found no ground to set aside the impugned award. The Court concurred with certain findings of the Arbitral Tribunal and observed that the Arbitral Tribunal’s view was “*reasonable and balanced*”. The Learned Commercial Court declined to accept that the impugned award was vitiated by patent illegality or was in conflict with the fundamental policy of Indian law.



Accordingly, it found no ground for interference with the impugned award under Section 34 of the A&C Act.

### ***Submissions***

19. Mr Sharma, learned counsel appearing for FIITJEE has assailed the impugned award as well as the impugned judgment on the singular ground that the award of ₹47,01,120/- on account of costs for fabrication of signages is without any evidence. He referred to the decision of the Supreme Court in ***Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*** and submitted that an award of compensation based on no evidence at all would be amenable to challenge on the ground of patent illegality. He also referred to Clause 3(a) of the Agreement and submitted that the obligation of FIITJEE to pay the total costs of fabrication was contingent on Pioneer submitting the invoices detailing the cost incurred by it. He submitted that Pioneer had not furnished any evidence before the Arbitral Tribunal to establish the quantum of fabrication cost incurred by it; therefore, the impugned award was, thus, liable to be set aside.

20. In order to consider the aforesaid contention, it would be relevant to refer to the impugned award for appreciating the reasons that persuaded the Arbitral Tribunal to accept Pioneer's quantification of the claim with regard to fabrication charges. The Arbitral Tribunal had struck a specific issue as to quantum of the amount payable to Pioneer. Issue No.2 as struck reads as "*To what amount is the Claimant entitled towards fabrication charges?*".



21. The Arbitral Tribunal noted that Pioneer had submitted the bills of the amount incurred by it in fabrication of the signages. FIITJEE had not disputed the bill at any stage or contested the amount as reflected in the bill. The Arbitral Tribunal, thus, accepted that Pioneer had incurred a sum of ₹47,01,120/- and was entitled to the said amount in terms of the Agreement.

22. The learned Commercial Court also found that there was no dispute as to the quantum of costs incurred as FITJEE had not denied that it had received the Invoice dated 07.06.2018 and that the cost of fabrication and installation of signages amounted to ₹47,01,120/-.

23. It is relevant to note that Pioneer had expressly stated in its Statement of Claims that the fabrication costs after installation, worked out to ₹47,01,120/- and an Invoice (Invoice No. PPCD/425/18-19 dated 07.06.2018) was issued to FIITJEE. Paragraph (g) under the broad heading, “*brief description of the nature and circumstances of the dispute giving rise to the present claim(s)*”, reads as under:

“g. Under the agreement dated 11.01.2018 the cost of fabrication of the proposed layout of the IIT Metro station was to be borne by the respondent. The said fabrication cost after installation worked out to Rs.47,01,120/- and invoice no. PPCD/425/18-19 dated 07/06/2018 was issued to the respondent.”

24. FIITJEE had traversed the aforesaid averment in its Statement of Defence in the following words:

“g. That the contents of corresponding para (g) of the Statement of Claims apart from those that are matter of record are denied as wrong. It is a matter of record



that under the agreement, the cost of fabrication of the proposed layout of the IIT Metro Station was to be borne by the Respondent. It is a matter of fact that the said fabrication cost after installation worked out to Rs. 47,01,120/- or that invoice no. PPCD/425/18-19 dated 07.06.2018 was issued to the Respondent. However, in the facts of the present case it is apt to point out that the alleged fabrication charges were agreed upon under the impression and mutual understanding amongst the parties of the agreement, which the same shall persist for a period of 10 years.”

25. It is clear from the above that FIITJEE had disputed Pioneer’s entitlement for the said claim, *inter alia*, on the ground that it had not derived the benefit as was agreed under the Agreement; FIITJEE did not dispute the quantum of costs incurred by Pioneer for fabrication and installation as claimed. FIITJEE had disputed Pioneer’s claim on the ground that it had breached the Agreement. However, FIITJEE did not contest that Pioneer had incurred the cost that it claimed and had furnished the invoice for the same.

26. There is no material on record to suggest that FIITJEE had, at any point, raised any objections to the invoice raised by Pioneer in terms of the Agreement.

27. Clearly, in the given set of pleadings, Pioneer was not required to lead any evidence or material to establish the quantum of the cost incurred as the same was not disputed.

28. We find no fault with the Arbitral Tribunal in proceeding on the basis that there was no dispute as to the quantum of cost incurred by Pioneer. The learned Commercial Court had rightly rejected FIITJEE’s contention in this regard.



29. We find no merit in the present appeal. The same is, accordingly, dismissed. All pending applications are also disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**AUGUST 22, 2023**  
**RK**